

BEFORE DENISE JUNEAU, STATE SUPERINTENDENT OF PUBLIC INSTRUCTION,  
STATE OF MONTANA

\*\*\*\*\*

PATRICIA PALIN,	)	
	)	
Appellant,	)	OSPI 339-15
	)	
vs.	)	<b>DECISION AND ORDER</b>
	)	
WHITEFISH SCHOOL DISTRICT #44	)	
	)	
Respondent.	)	

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Having reviewed the record and considered the parties' briefs, the Superintendent of Public Instruction issues the following decision and order:

**PROCEDURAL HISTORY**

The Whitefish School District Board of Trustees (District) voted to not renew Patricia Palin's (Palin) teaching contract for the fourth consecutive year at a meeting held on April 14, 2015. Palin timely filed a Notice of Appeal to the Flathead County Superintendent of Schools. The Flathead County Superintendent of Schools dismissed Palin's appeal for lack of jurisdiction.

The parties have filed briefs and this matter is now at issue.

**STATEMENT OF FACTS**

1. Palin was employed as a Family and Consumer Sciences teacher in the District for the 2012-2013, 2013-2014, and 2014-2015 school years.
2. In April, 2015, at the time Palin's employment contract with the District was not renewed, Palin was not a tenured teacher in the district.

3. The District's board of trustees voted to not renew Palin's contract at a meeting held on April 14, 2015.

6 The meeting was not closed during a discussion of Palin's contract nonrenewal.

### **ISSUE ON APPEAL**

Did the county superintendent err in determining he did not have jurisdiction over this appeal?

### **STANDARD OF REVIEW AND AUTHORITY**

The Superintendent of Public Instruction's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA and adopted by the Superintendent of Public Schools in ARM 10.6.125.

The Superintendent of Public Instruction may reverse or modify a county superintendent's decision if substantial rights of a party have been prejudiced because the conclusions of law and order are: (a) in violation of constitutional or statutory provision; (b) in excess of the statutory authority; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable probative and substantial evidence on the whole record; (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (g) affected because findings of fact upon issues essential to the decision were not made although requested. ARM 10.6.125(4).

A county superintendent's conclusion of law is reviewed to determine if the interpretation of law is correct. *Baldrige v Board of Trustees*, 264 Mont. 199, 870 P.2d 711 (1994).

### **CONCLUSIONS OF LAW AND OPINION**

**Issue. Did the county superintendent err in determining he did not have jurisdiction over this appeal?**

No. The County Superintendent correctly concluded he did not have jurisdiction to hear this matter pursuant to ARM 10.6.104 because it is not a contested case as defined by Montana law.

Section 20-3-210, MCA states:

Controversy appeals and hearings. (1) Except for disputes arising under the terms of a collective bargaining agreement or as provided under 20-3-211 or 20-4-208, the county superintendent shall hear and decide all matters of controversy arising in the county as a result of decisions of the trustees of a district in the county. \*\*\*

The Administrative Rules of Montana (ARM) provide clarification and further definition.

10.6.101 SCOPE OF RULES (1) These rules govern the procedure for conducting all hearings on school controversy cases arising under the provisions of Title 20, MCA, before the county superintendent... and all appeals to the State Superintendent of Public Instruction. \*\*\*

10.6.102 SCHOOL CONTROVERSY MEANS CONTESTED CASE (1) Contested case means any proceeding in which a determination of legal rights, duties or privileges of a party is required by law to be made after an opportunity for hearing.

While this is a controversy resulting from a decision of the Board, not all decisions of a board of trustees are contested cases. The Montana Supreme Court has determined a dispute with a school board does not rise to the level of a contested case unless the individual has a constitutional interest at stake or a statutory right to a hearing.

There is no dispute the Palin was a nontenured teacher at the time her contract was not renewed. Palin does not raise any legal issue related §20-4-206, MCA, regarding nontenured teachers. Nor does she raise any other issues arising under Title 20, MCA, but relies on a possible constitutional, freedom of speech issue allegedly related to the superintendent's recommendation to not renew her contract. That issue is outside of the scope of jurisdiction of the County Superintendent.

The Montana legislature and case law has made it clear that nontenured teachers have no right to employment with a district or right to a hearing when not offered an annual contract. Once a teacher reaches tenure status with a district, very specific rights attach to that teacher's employment with the district. (See §§ 20-4-203 and 204, MCA.)

*Roos v. Kircher Public Sch. Bd. of Trs.*, 2004 MT 48, 320 Mont. 128, 86 P.3d 39, involved a nontenured teacher whose contract was not renewed. The Court held that although Roos raised allegations of policy violations, she failed to allege any violation of state statute granting an administrative hearing or constitutionally protected interest entitling her to a hearing before the county superintendent. "[A]n aggrieved person must be able to identify a legal right

to contest a school board's decision; absent a statutory or constitutional right to a hearing, a county superintendent does not have jurisdiction to hear a matter. “ *Roos*, ¶10. Although Palin lost her job with the District and has alleged violations of the open meeting law, a constitutionally protected right to privacy, violation of her First Amendment right of free speech and discrimination, she has no right under Montana law to a hearing for nonrenewal of her contract as a nontenured teacher. As § 20-4-206(3), MCA clearly states “trustees may nonrenew the employment of a nontenure teacher at the conclusion of the school fiscal year with or without cause.”

The Montana Supreme Court in *Roos* clarified that a nontenured teacher has no right to a hearing when not given a new contract.

Furthermore, in *Irving v. School District No. 1-1A* (1991), 248 Mont. 460, 813 P.2d 417, we upheld the State Superintendent's decision that a teacher denied contract renewal did not have the right to appeal. We stated that, “Nowhere in ... the statutes ... is [the teacher] given a right to appeal her non-renewal. Moreover, as a non-tenured teacher she has no legally recognized property right in a new contract.”

*Roos*, ¶11.

A similar situation was addressed in *Dupuis v. Ronan* 2006 MT 3, 330 Mont. 232, 128 P.3d 1010. In *Dupuis*, the local school board heard public comment, recommendations and opinion regarding the board's pending decision on appropriate school mascots. The *Dupuis* decision stated, “A mere disagreement with a school district does not automatically entitle an aggrieved party to a contested case hearing to resolve the disagreement.” *Dupuis*, ¶12, citing *Roos*, ¶10.

Although the Board ultimately did not heed these recommendations, disagreement with a Board's discretionary decision does not automatically give rise to the level of a “contested case” within the meaning of Rule 10.6.102(1), ARM. *Roos* ¶ 10. Similarly, absent a “contested case,” the District policies do not grant the right to an appeal from an unfavorable decision.

*Dupuis*, ¶13.

Palin cites *Paun v. Board of Trustees Choteau County School District Number 56*, OSPI Decision and Order 27-82 and *Branch v. School District No. 7*, 432 F. Supp. 608 (D Montana 1977) regarding the board's reasons for nonrenewal. These cases do not apply because the law regarding nontenured teacher reelection has changed since these decisions were issued.

In 1997, the Montana Legislature amended the statutes related to tenure, removing a

requirement that, upon request, a nontenured teacher be notified of the reasons for nonrenewal. The legislature also eliminated the requirement for a hearing before the county superintendent if the teacher believed the reasons given for nonrenewal were untrue. As addressed above, under current Montana law, there is no provision for a hearing when a teacher's contract is not renewed prior to the end of the school's fiscal year. Therefore, there is no "controversy" or "contested case" as addressed in § 20-3-210, MCA and defined in ARM 10.6.102.

Palin also claims a violation of Montana's open meeting laws because the Board did not close the meeting when discussing her contract nonrenewal. Violations of open meeting laws are specifically under the jurisdiction of state district courts. "Any decision made in violation of 2-3-203 may be declared void by a district court having jurisdiction." §2-3-213, MCA.

She also alleges she was denied the opportunity at the school board meeting to distribute copies of her evaluations and evidence of her professionalism. However, there was no hearing to address the recommendation of the District Superintendent regarding nonrenewal of her contract, as no hearing is required under state law. Therefore, the District did not have to accept her evidence. The District considered the nonrenewal of Palin's contract and decided to not offer her an employment contract for the following school year.

A county superintendent does not have jurisdiction to rule on any issues outside of Title 20, MCA. "Constitutional questions are properly decided by a judicial body, not an administrative official..." *Jarussi v. Bd. Of Trustees of School Dist. No. 28*, 204 Mont. 131, 135-36, 664 P.2d 316, 318 (1983). Likewise a county superintendent does not have jurisdiction over discrimination claims. In *Dupuis*, supra, the Montana Supreme Court stated that the Montana Human Rights Act provides the exclusive remedy for state law claims alleging discrimination.

Palin's allegations of constitutional violation related to her right to privacy and her claim of discrimination are not appropriately before the County Superintendent in this case.

For the reasons addressed herein, the County Superintendent properly determined he did not have jurisdiction to hear this matter. Dismissal of Palin's appeal is affirmed.

DATED this 2nd day of December, 2015.

/s/ Denise Juneau  
Denise Juneau,  
Superintendent of Public Instruction

**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that on this 4th day of December, 2015 I caused a true and exact copy of the foregoing DECISION AND ORDER to be mailed, postage prepaid, to the following:

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/s/ Beverly Marlow  
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